

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

CHARLES JUAN PROCTOR,

Plaintiff,

vs.

DR. VAN HORN, et al.,

Defendant(s).

3:12-cv-00328-MMD-WGC

**ORDER**

Before the court is Defendants' Motion for Reconsideration of the Court's Order re Plaintiff's Motion for Leave to Amend. (Doc. # 60.)<sup>1</sup> On December 18, 2013, Plaintiff filed a motion to amend his complaint to add Northern Nevada Correctional Center Director of Nursing Terri Jacobs as a party Defendant. (Doc. # 49.)<sup>2</sup> The court denied Plaintiff's motion because the motion to amend was not accompanied by a proposed amended complaint as is required by Local Rule 15-1. (Doc. # 56.) However, the court's order did allow Plaintiff leave to file an amended complaint. (*Id.*)

The court's order was in error. What the court's order should have stated was that Plaintiff was permitted to re-file his motion for leave to file an amended complaint if such motion was accompanied by a proposed amended complaint which is complete in itself without reference to any prior pleading. The court did not mean to grant Plaintiff leave to file an amended complaint which included Ms. Jacobs as a party defendant.

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<sup>1</sup> Refers to court's docket number.

<sup>2</sup> The court inadvertently overlooked Defendants' opposition to Plaintiff's motion (Doc. # 55) which was filed December 31, 2013, prior to entering its order (Doc. # 56) on January 10, 2014.

1 After a motion for leave to amend, accompanied by a proposed amended complaint, has been  
2 filed, the Defendants may re-file their opposition (Doc. # 55) and Plaintiff may submit a reply  
3 memorandum.

4 The court notes Defendants' opposition (Doc. # 55) is based on the argument Plaintiff's  
5 characterization in his motion of the involvement of Ms. Jacobs failed to establish a constitutional claim.  
6 While in retrospect the court recognizes there very well may be a futility in any proposed amended  
7 complaint the Plaintiff may file with respect to Ms. Jacobs, the court cannot make that determination  
8 until the court has had an opportunity to review the specific allegations Plaintiff might aver in his  
9 proposed complaint.

10 Now, therefore, it is hereby ordered as follows:


- 11 1. Defendant's motion for reconsideration (Doc. # 60) is **GRANTED**.
- 12 2. This court's order (Doc. # 56) is **AMENDED** as follows:

13 (a) Plaintiff may refile a motion for leave to amend his complaint to assert a cause of action  
14 against Terri Jacobs. Plaintiff's motion, if any, must be accompanied by a proposed amended complaint  
15 that is complete in and of itself without reference to any prior pleading. If Plaintiff chooses to refile his  
16 motion to amend, he must do so on or before **February 10, 2014**.

17 (b) If Plaintiff re-files a motion for leave to amend, Defendants may advise the court their  
18 opposition is predicated upon their memorandum of December 31, 2013 (Doc. # 55) or Defendants may  
19 submit a new memorandum. Defendant's response, in whatever form, is due **fourteen (14) days** after  
20 service of Plaintiff's motion. Plaintiff shall have until **seven (7) days** after service of Defendants'  
21 opposition to file his reply memorandum, if any.

22 **IT IS SO ORDERED.**

23 DATED: January 14, 2014.

24   
25 WILLIAM G. COBB  
26 UNITED STATES MAGISTRATE JUDGE  
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